

# NAVAL POSTGRADUATE SCHOOL

## MONTEREY, CALIFORNIA



### THESIS

**SMALL BUSINESS AND  
ENVIRONMENTAL CLEANUP AT  
FORT ORD, CALIFORNIA**

by

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December 1995

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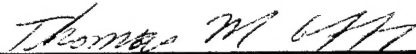
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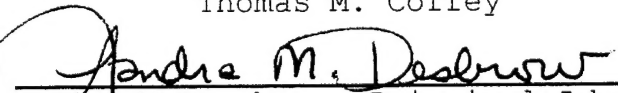
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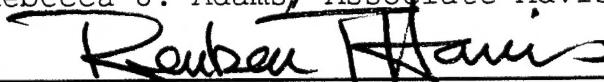
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## ABSTRACT

This thesis examines the problems facing small businesses in the Monterey, California area, that are preventing them from receiving a greater share of the Government's environmental cleanup contracting dollars. The closure of military installations has increased the emphasis on environmental cleanup, which in turn has created many opportunities for small businesses. The Army plans on spending at least \$240 million in the next 10 years on environmental cleanup of Fort Ord. This amount could very well increase as the environmental cleanup progresses and additional problems are encountered. An analysis of the current contracting process and the actions of contractors and small businesses associated with the clean-up of Fort Ord, was conducted to determine the barriers to entry into Government contracting. Data were collected utilizing personal interviews with experienced professionals at the Corps of Engineers, District Headquarters and field office, numerous public meetings relating to Government contracting and the environmental cleanup at Fort Ord, and interviews with small business owners. Conclusions were drawn from the analysis of these data, and recommendations for the resolution of the problems were presented in an attempt to improve small businesses' opportunity to receive Government contracts or subcontracts.



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## **I. INTRODUCTION**

### **A. PURPOSE**

This thesis examines the problems facing small businesses in the Monterey, California area, that are preventing them from receiving a greater share of the Government's environmental cleanup contracting dollars. These problems are identified and discussed after examining the interaction between agencies and businesses who have an interest in the environmental cleanup contracting associated with Fort Ord, California. Recommendations for the resolution of the problems are presented in an attempt to improve small businesses' opportunity to receive Government contracts or subcontracts.

### **B. BACKGROUND**

Over the years the Government and the public have continually grown more environmentally conscious. The desire to protect and cleanup the environment has added a tremendous cost of operating in both the Government and the private sectors. Numerous Federal and State regulations have been enacted to protect the environment. These regulations have added to the cost of environmental cleanup. The goal of both the Federal and State Governments has been to reduce the amount of hazardous waste generated, to restore areas that have been contaminated, and to prevent any future contamination of the environment.

The biggest generator of hazardous waste in the United States is the Department of Defense (DOD). DOD generates more than 500,000 tons of hazardous waste each year [Ref. 1]. Military installations use independent contractors to



transport, treat, store, and dispose of hazardous waste. The installations arrange for the disposal of certain types of waste, and the Defense Reutilization and Marketing Service contracts on behalf of the installations for disposal of the remaining waste.

As of July 1990, the Marketing Service had 79 active contracts valued at an estimated \$86.2 million, with 30 different contractors (Table 1) [Ref. 4]. Small businesses accounted for 30 percent of the contracts and 16 percent of the total dollar value.

<u>Dollars in</u> <u>millions</u>	<u>Number of</u> <u>contracts</u>	<u>Percent</u>	<u>Contract</u> <u>value</u>	<u>Percent</u>
Top 2 large businesses	32	41	\$39.7	46
Next 11 large businesses	23	29	32.4	38
17 small businesses	24	30	14.1	16
<b>TOTAL</b>	<b>79</b>	<b>100</b>	<b>\$86.2</b>	<b>100</b>

Table 1: Active Contracts as of July 1990

The Government's costs of cleaning up hazardous waste have been tremendous and are expected to climb. The General Accounting Office's (GAO) data show that the Government's 10 largest contracts have already incurred investigation and initial cleanup costs totaling nearly \$300 million. As to future DOD environmental cleanup costs, GAO projections range from \$0.9 billion to \$1.1. billion [Ref. 3].

This is indeed a fertile area for current and future contracting opportunities with the Government. If small businesses can participate in the environmental cleanup process, they will aid the local communities during an era of economic decline associated with the closure of a major military installation.

#### **C. THESIS OBJECTIVE**

The object of this research is to identify the problems facing small businesses in the Monterey, California area, that are preventing them from receiving a greater share of the Government's environmental cleanup dollars. Barriers to entry into Government contracting will be determined primarily by an analysis of the current contracting process and the actions of contractors associated with the clean-up of Fort Ord.

#### **D. RESEARCH QUESTIONS**

To achieve the stated objective, the following Primary and Subsidiary questions are presented:

##### **1. Primary**

What are the principal barriers that small businesses in the Monterey, California area, must overcome to participate in the environmental cleanup at Fort Ord, California?

##### **2. Subsidiary**

a. Why have Monterey area small business contractors not been successful in competing for Federal Government environmental cleanup contracts at Fort Ord, California?

b. Are there barriers, either real or perceived, to Monterey area small businesses desiring to compete for the Government environmental cleanup contracts?

c. How have small businesses currently under Government contracts entered the market at Fort Ord?

d. What resources are available to assist small businesses in the Monterey area in competing for environmental cleanup contracts at Fort Ord?

#### **E. SCOPE AND LIMITATIONS OF RESEARCH**

The scope of this thesis is limited to an analysis of the Governmental contracting process with respect to local small businesses and the environmental cleanup of Fort Ord. Information is limited to agencies and contractors associated with the environmental cleanup contracting of Fort Ord, California, during 1995. Associated regulations, policies, and directives pertaining to Government contracting and small businesses are identified and discussed. Information from Governmental agencies is limited to the 19th Congressional District representative, Monterey, California; the United States (U.S.) Army Corps of Engineers, Sacramento, California; and the Small Business Administration (SBA), San Francisco, California. Local Governmental information is limited to the Fort Ord Reuse Authority (FORA). Due to the complexity and enormity of regulatory guidance surrounding environmental cleanup at both the Federal and State levels, issues pertaining to environmental laws are not addressed in this thesis.

#### **F. METHODOLOGY**

The research methodology used in the data collection included personnel interviews with experienced professionals

at the Corps of Engineers, District Headquarters and field office, a public meeting conducted by the Department of Environmental Health, relating to Government contracting, and interviews with small business owners. Other data for this paper were acquired through the following sources:

- Defense Logistics Studies Information Exchange (DLSIE)
- Defense Technical Information Center (DTIC)
- Department of Defense Federal Acquisition Regulation Supplement (DFARS)
- Federal Acquisition Regulation (FAR)
- Naval Postgraduate School Library
- The Small Business Administration
- The Monterey County Herald
- Acquisition Library

After all the research was conducted and information gathered, the Governmental contracting process was analyzed. Current procedures, laws, and regulations pertaining to this process were evaluated with respect to the environmental cleanup contracting of Fort Ord, California. Using this as a basis, the problems associated with entry into the Governmental contracting process were identified and discussed. Conclusions were drawn from this analysis and recommendations were proposed to aid local small businesses in the entry into Government contracting.

#### **G. ORGANIZATION OF STUDY**

Chapter I provides the background and objective of this thesis.

Chapter II introduces Governmental contracting, its legislation, processes, and procedures. Governmental contracting is discussed as it pertains to small business, and introduces the concept of the Total Environmental Restoration Contract (TERC).

Chapter III provides information obtained from interviews conducted with both Government agencies and private contractors.

Chapter IV presents an analysis of the Governmental contracting process associated with the environmental cleanup of Fort Ord, California. Barriers to entry into the Governmental contracting process were identified and discussed.

Chapter V summarizes conclusions from the analysis and sets out recommendations to assist local small businesses in the entry into Government contracting. This chapter concludes with recommendations for future research.

## II. GOVERNMENT CONTRACTING AND ENVIRONMENTAL CLEANUP: FORT ORD

### A. GOVERNMENT CONTRACTING

#### 1. Regulations

The Federal Acquisition Regulation (FAR) and the Defense Federal Acquisition Regulation Supplement (DFARS) are the primary sources of regulations governing all Government contracting. The FAR consists of procurement policies and many detailed procedural and administrative requirements that all Government agencies, to include the Department of Defense (DOD), must follow. DOD agencies must also adhere to the DFARS. The DFARS contains instructions for implementing the FAR within DOD and supplementary regulations that are unique to DOD. The DFARS is not a stand-alone document and must be used in conjunction with the FAR. Since the FAR and DFARS are the governing regulations used by all Government contracting officers, a familiarity with these regulations is essential for potential contractors to compete successfully for Government contracts.

An essential element in both regulations is the method of solicitation for Government contracts. Specifically, the FAR delineates the requirement for the announcement of Government procurements.

#### 2. Contracting Announcements

The FAR specifies several methods of assuring that all prospective contractors are aware of Government contracting opportunities. The most common methods employed by DOD are

the Commerce Business Daily (CBD) and the use of solicitation mailing lists.

The FAR requires virtually every proposed Government procurement over \$25,000 to be publicized in the CBD at least 15 days prior to the issuance of a solicitation. The Federal Acquisition Streamlining Act (FASA) has raised the threshold from \$25,000 to \$50,000. If a Government contracting office has an Electronic Data Interchange (EDI) then the threshold is raised to \$100,000. The exact language to be placed in the FAR was released in the Federal Register in February 1995. The solicitation must allow at least 30 days for prospective contractors to respond. The FAR also requires Government agencies to publish information on subcontracting opportunities in the CBD. This information includes the names and addresses of firms awarded contracts over \$25,000 that are likely to result in subcontracts.

A second way to find out about prime contracting opportunities is to be included on the solicitation mailing list of a Government contracting office or organization likely to have a need for your service or product. Each Government contracting office must establish and maintain its own lists of prospective suppliers. For a business to be placed on a solicitation mailing list it must submit a Standard Form (SF) 129, "Solicitation Mailing List Application" to the appropriate Government contracting office. The contracting office is required to notify the business of its acceptance or rejection for inclusion on the solicitation mailing list. Once a company is placed on the solicitation mailing list, solicitations for requirements will automatically be issued to each company meeting the need. However, a business must respond to each solicitation

with either an offer or a request for retention on the list: otherwise, they are dropped from the list. In situations where the solicitation mailing list is extremely long, only a portion of the list is used for a particular acquisition. In this case, businesses on the list are rotated for subsequent acquisitions to ensure each business has a fair opportunity to compete. Additionally, in such situations, the regulations require that a prorated number of small business be solicited [Ref. 12]. In these cases, while both the CBD and the solicitation mailing list methods are sufficient for larger businesses, a small business may want to look into subcontracting opportunities to compete for contracts.

### **3. Subcontracting Opportunities**

Information about subcontracting opportunities is provided in DOD's pamphlet "Subcontracting Opportunities with DOD Major Prime Contractors." This pamphlet is issued annually by the Office of Small and Disadvantaged Business Utilization [Ref. 8]. It lists the DOD prime contractors with established plans and goals for subcontracting with small businesses and small disadvantaged businesses. The directory provides the address, product or service, and the name and telephone number of the company's small business liaison officer. Small businesses must also be aware that as a subcontractor they have a contractual agreement with the prime contractor and not the Government.

### **4. Government Contracting Process**

The United States Government is the world's largest buyer of goods and services. Purchases by military and civilian installations amount to about \$180 billion a year



[Ref. 26]. These contracts can vary from Firm-Fixed-Price (FFP) to Cost-Plus-Incentive-Fee (CPIF), either through sealed-bid or competitive proposals. Regardless of the type of contract, however, all procurements must follow the same Government contracting procedures: selection of procurement solicitation, evaluation, negotiation, selection of source and award. Of these, procurement solicitation is one of the most important aspects relating to Government contracting.

**a. Procurement Solicitation**

The FAR requires the use of full and open competitive procedures in virtually all procurements. This regulation establishes the following priority for procurement procedures [Ref. 12]:

(1) Sealed Bid. Sealed bid is used when time permits, award is based on price or price related factors, discussions are not necessary, and more than one bid is expected.

(2) Competitive Proposals. Competitive proposals are used when sealed bids are not appropriate.

(3) Combination Of Competitive Procedures. A combination of Sealed Bid and Competitive Proposals is used when one method alone is not sufficient to accomplish the procurement (i.e. two-step sealed bidding).

(4) Other Competitive Procedures. Other competitive procedures include architect-engineering, basic and applied research, and multi award schedules. These methods are used under the provisions stated in FAR Part 6.102(d).

(5) Other Than Full And Open Competition. Other than full and open competition is used when there is only one source for the product or time does not permit a

full competition, or other statutory or national security exceptions apply.

**b.    Sealed Bid Process**

Sealed bidding is a strictly controlled, formal process designed to protect the integrity of the competitive bidding system [Ref. 12]. Sealed bidding begins with the issuance of an invitation for bids (IFB), which contains all the information bidders require to respond. The IFB states the need and defines the work or product in sufficient detail to allow all bidders to compete on the same basis. It also states all significant factors to be considered in evaluating the bids and the relative importance of each factor. Cost is usually the main factor. Bidders are provided standard forms on which to submit bids, and a specific time for the public opening of the bids [Ref. 8]. The contract is awarded to the responsible bidder whose bid is most advantageous to the Government. Unless other factors are identified in the IFB, award is based on price alone. The actual award must be made within a time specified in the IFB, usually 60 days from the bid opening date.

Bids must be received by the date and time specified in the IFB in order to be considered for contract award. The bid must also offer what is called for in the IFB. Bids that fail to meet any essential requirement of the IFB or take exception to any material provision of the IFB will be rejected.

**c.    Competitive Proposals Process**

Competitive proposals are used when a sealed bid is not appropriate. This method generally entails holding discussions with the potential contractors, but contracts can be awarded without discussions.

Procurement by competitive proposals begins with the issuance of a request for proposal (RFP). The Government must have discussions with all offerors within the competitive range unless the discussions are needed only for minor clarifications. The competitive range is determined by considering price and other factors included in the solicitation. Award is made to the responsible bidder whose proposal is most advantageous to the Government, considering only price and other factors included in the solicitation [Ref. 12].

Sealed bid and competitive proposals are awarded differently. Award under sealed bidding must be made on the basis of price and price related factors. On the other hand, award under competitive proposals may be made on the basis of price and other factors (e.g. technical, past performance, management, etc.).

## **B. ENVIRONMENTAL CLEANUP: FORT ORD**

### **1. History of Contracting**

The United States Environmental Agency identified Fort Ord, California, as a potential Federal Superfund site on the basis of ground water contamination. The installation was placed on the National Priorities List (NPL) on February 21, 1990 [Ref. 13]. The NPL prioritizes sites for long-term environmental evaluation and response actions. In November, 1990, the Army became the lead agency for the Superfund cleanup process at Fort Ord.

Extensive environmental studies conducted at Fort Ord since 1984 have identified areas with known or suspected soil and/or ground water contamination. Testing to date demonstrates that none of this known contamination

represents an immediate threat to public health or the environment. The United States Army is fully committed to the cleanup of Fort Ord.

Fort Ord, California, offers Small Business and Small and Disadvantaged Business, particularly in the Monterey area, a prime opportunity to supply goods and services to the Government. Fort Ord comprises an area of approximately 44 square miles in northwestern Monterey County. Neighboring cities include Seaside, Marina, Sand City, Del Rey Oaks, and Monterey.

The United States Army has spent more than \$40 million on environmental surveys and cleanup at Fort Ord, California since it announced the base's closure in 1990. Of the money spent so far, only \$45,250 has gone to Monterey County firms (Figure 1). Five companies have been awarded large contracts. The major contractor for the environmental work at Fort Ord is Harding Lawson Associates of Novato in Marin County, California, who has received about \$31.4 million. At the time of contract award, Harding Lawson was considered a small business, but over the years it has grown and is no longer a small business [Ref. 34]. Most of Harding Lawson's subcontractors have been from the San Francisco Bay area. Harding Lawson claims qualified local subcontractors are hard to find [Ref. 21].

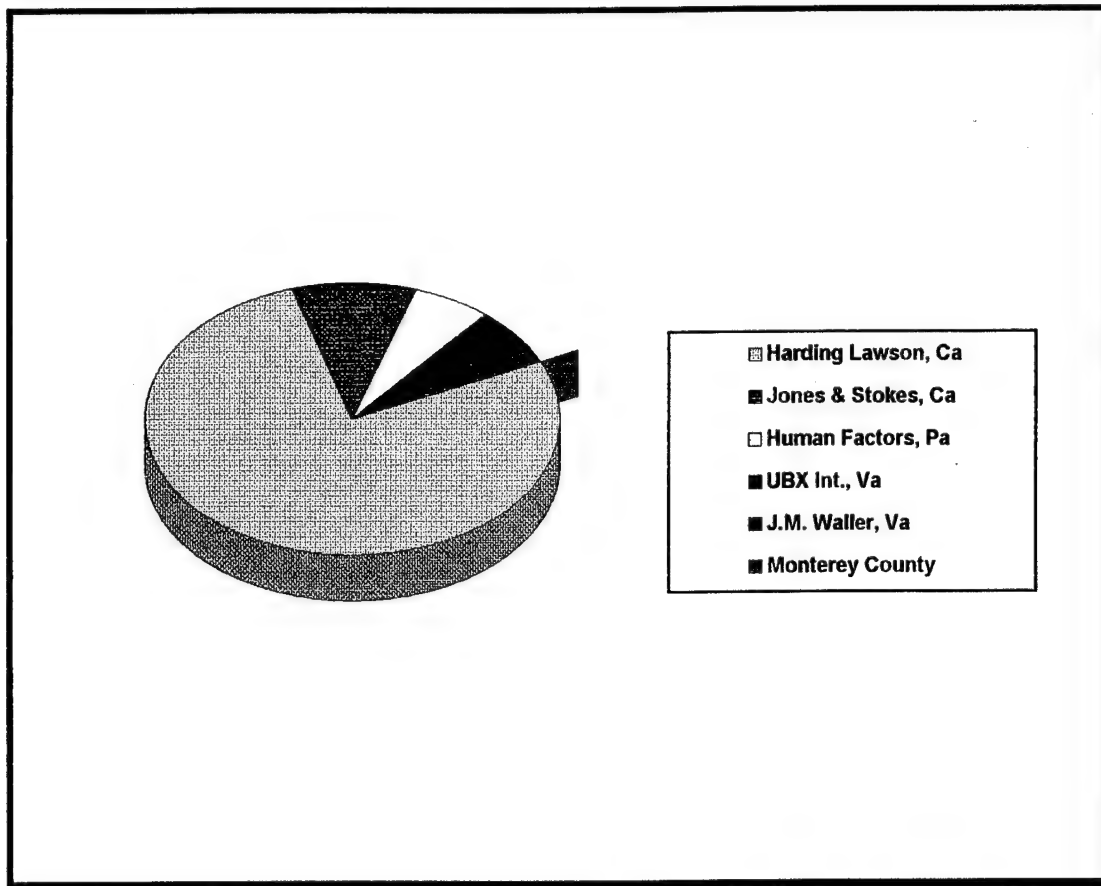


Figure 1: Fort Ord Contract Breakout

The bulk of the environmental cleanup at Fort Ord will be accomplished through a Total Environmental Restoration Contract (TERC) issued through the Corps of Engineers, Sacramento, California. The TERC was awarded to International Technology (IT) Corporation in May 1995. The cost of the TERC is not to exceed \$180 million and is expected to be enforce for the next 10 years [Ref. 19]. About \$71 million of the TERC is for environmental cleanup at Fort Ord and the remaining \$109 million is for environmental cleanup work at other Army bases in California, Nevada, Utah, and Arizona. The TERC requires IT Corporation to utilize small businesses and small and

disadvantaged businesses, for 50 percent of its subcontracts [Ref. 19].

In addition to the environmental contracts awarded through the Corps of Engineers, Sacramento, the Corps of Engineers, Huntsville, Alabama, is awarding a contract for the removal of unexploded ordnance. The Corps of Engineers, Huntsville, expects to spend \$80 to \$100 million in the next ten years for ordnance removal [Ref. 21].

Current plans have the Army spending at least \$240 million in the next 10 years on environmental cleanup at Fort Ord. This amount could very well increase as the environmental cleanup progresses and additional problems are encountered.

## **2. Total Environmental Restoration Contract (TERC)**

The TERC is a new contracting tool developed by the United States Army, Corps of Engineers and approved by the Office of the Assistant Secretary of the Army for Research, Development and Acquisition (SARDA). It was developed for the remediation of complex sites contaminated with Hazardous, Toxic, and Radioactive Waste (HTRW) [Ref. 31].

A TERC specifies a contract boundary and identifies a specified anchor installation requiring HTRW remediation. An installation is any Government-owned or pre-owned properties (e.g. base, fort, post, facility, work site, etc.). Non-specified installations are not identified at the time of contract award but fall within the TERC boundary and can be accomplished under the TERC, provided the criteria for TERC use are satisfied. The criteria for projects selected for a TERC are [Ref. 29]:

- Two or more sites require remediation.
- There is a high probability that interim remediation of point sources of contamination will be required.
- Significant interface and coordination of remediation activities is required.
- Close coordination of remediation effort must be maintained between sites.
- Funding is phased by site.
- Contractor accountability and liability are critical issues.
- Critical interface is required between sites.
- Management of more than one contractor on an installation presents unacceptable administration problems in such areas as coordination and movement of work forces and equipment, separation and acceptance of contractor responsibility, and verification of performance and progress.
- Project conditions indicate there will be a need for the contractor to respond quickly to situations without interference from another contractor working in close proximity to the site.

Generally, once an installation is approved for a TERC, all HTRW work at that installation is accomplished by the TERC contractor. However, situations may occur where it is in the best interest of the Government to use other contractors or Government agencies to accomplish the HTRW work at the TERC installation [Ref. 29]. The TERC is not meant to replace traditional contracting tools but is used for certain high priority, time-sensitive cleanup

requirements, such as Army and Air Force Base Realignment and Closure (BRAC) projects [Ref. 30].

Work on the TERC is accomplished through delivery orders. Each delivery order is usually either a cost-plus-fixed-fee (CPFF) or cost-plus-award-fee (CPAF) [Ref. 29]. Other cost-reimbursement incentive type delivery orders may be used when warranted. Fixed-price, time and materials, and other contract type delivery orders are not allowed. The TERC contractor may use a variety of subcontracting methods to include fixed-price and cost-reimbursement subcontracts.

A key objective in the TERC acquisition strategy is to enhance the development of—small business and small and disadvantaged business (SB/SDB) firms in the HTRW industry. This is accomplished by placing significant emphasis on the utilization of these firms in TERC teaming arrangements, either as first tier subcontractors or through joint ventures. Contractor's utilization of SB/SDB firms must be addressed in their proposals and must be a significant factor in the source selection process [Ref. 29].

### **3. Legislation Affecting Small Business**

In 1942, Federal programs were established to assist small manufacturing firms in obtaining Government contracts to supply materials for the war effort. Since that time, procurement assistance programs have continued and expanded to include virtually all Federal agencies.

In 1953, Congress passed the Small Business Act and created the Small Business Administration, (SBA) [Ref. 26] declaring the following policy regarding small business:



The Government should aid, counsel, and protect insofar as possible the interests of small business concerns in order to preserve free competitive enterprise, to insure that a fair proportion of the total purchases and contracts for supplies and resources for the Government be placed with small business enterprises, and to maintain and strengthen the overall economy of the Nation. [Ref. 11:p. 25]

The SBA's purpose was to assist and protect the interests of small businesses and ensure they are awarded a fair portion of Government contracts. Since the law's enactment, small businesses' receipt of its fair share of the Federal procurement dollar has been erratic and in real terms has made little dramatic progress [Ref. 22].

In 1958, Congress passed Public Law 85-536, an amendment to the Small Business Act, which recognized the SBA as a permanent agency and small business as a distinct and vital element of the economy [Ref. 25]. The Act was further amended in 1961, adding a requirement for major Government prime and subcontractors to establish small business subcontracting programs.

Public Law 95-507 was passed in 1978, again modifying the Small Business Act. It established requirements for successful offerors in prime contract competitions to submit and negotiate a subcontracting plan as a condition of contract award. This requirement applied to all prime contracts exceeding \$500,000 (\$1M construction). The prime contractor's subcontracting plan must include percentage goals for using small businesses and small and disadvantaged businesses. Failure to comply with this plan in good faith is considered a material breach of contract.

#### **4. Small Business Administration (SBA)**

The SBA was created to assist small businesses in obtaining Government contracts. To accomplish this task the SBA was given the following authority:

- to make a detailed definition of a "small business concern,"
- to make loans,
- to enter into contracts with the United States Government and arrange for performance of these contracts by letting subcontracts to small business concerns,
- to make determinations as to the status of concerns in certain cases,
- to encourage small business concerns to join together for research and development type contracts,
- to certify the competency in regards to capacity and credit of small businesses to perform under certain Government contracts.  
[Ref. 10: p. 7-1]

##### **a. Qualification**

For a Small Business or Small and Disadvantaged Business to represent itself as such, it must meet the definition in FAR Parts 19.001 and 19.703. Basically this is a self certification by the small business. In addition, the SBA establishes small business size standards on an industry-by-industry basis [Ref. 12]. FAR Part 19.102 states that small business size standards are applied by:

- Classifying the product or service being acquired in the industry whose definition, as found in the Standard Industrial Classification

(SIC) Manual, best describes the principal nature of the product or service being acquired;

- Identifying the size standard SBA established for that industry; and
- Specifying size standards in the solicitation, so that offerors can appropriately represent themselves as small or large.

The SBA has proposed a new Standard Industrial Classification Code for environmental services that will set a size standard for what is considered a small business in the hazardous waste industry. However, the SBA has not made a final decision on this matter [Ref. 6].

**b. Certificate of Competency (COC)**

The COC program is one of the primary means through which the SBA helps small businesses obtain Government contracts. It does this by allowing a small business the opportunity to appeal a decision by a Government contracting officer that the firm, although it is the low bidder on a contract, is not capable of performing the contract in a satisfactory manner.

Currently, the SBA is empowered by Section 8(b) (7) of the Small Business Act of 1953:

To certify to Government procurement officers... with respect to all elements of responsibility, including, but not limited to, capability, competency, capacity, credit, integrity, perseverance, and tenacity, of any small business concern or group of such concerns to receive and perform a specific Government contract. A Government procurement officer... may not, for any reason specified in the preceding sentence, preclude any small business concern or group of such concerns from being awarded such

contract without referring the matter for final disposition to the Administration. [Ref. 32:p.238]

The Act goes on to say that:

In any case in which the small business concern or group of such concerns has been certified by the Administration... to be a responsible or eligible Government contractor as to a specific Government contract, the officers of the Government having procurement...powers are directed to accept such certification as conclusive, and shall let such Government contract to such concern or group of concerns without requiring it to meet any other requirements of responsibility or eligibility. [Ref. 32:p.238]

If a Government contracting officer determines that the low bidder on a particular contract is non-responsible, the contracting officer must notify the appropriate SBA office. Within 15 days after receiving notice that a small business lacks certain elements of responsibility the SBA must: [Ref. 12:p.17242]

- Inform the small business concern of the contracting officer's determination and offer it an opportunity to apply to the SBA for a COC.
- Upon receipt of the application, send an SBA team to visit the concern to investigate it only for the specific elements of responsibility that the agency notice specified as lacking, and make a recommendation to the SBA Regional Administrator.
- Notify the small business and the contracting officer that the COC is denied, or
- Send the COC to the contracting officer and advise the small business, through the Regional Office, of the action.

The contracting officer and the SBA shall make every effort to reach a resolution before the SBA takes final action on a COC. SBA COCs are conclusive with respect to all elements of responsibility of prospective small businesses. The contracting officer must also proceed with the acquisition and award the contract to another appropriately selected and responsible offeror if the SBA has not issued a COC within 15 business days after receiving the referral.

#### **5. Contract Set-Asides**

FAR Part 19.501 states "The purpose of small business set-asides is to award certain acquisitions exclusively to small business concerns." This is a method by which the Government gives preference in its procurements to small businesses by setting-aside or reserving all (Total Set-aside) or part (Partial Set-aside) of proposed procurements for small businesses only. Total set-aside means the entire procurement or class of procurements is reserved for small business participation. Generally this occurs when there is a reasonable expectation that (1) offers will be received from at least two responsible small businesses, and (2) awards will be made at a reasonable price [Ref. 12].

When a procurement does not meet the criteria for a total set-aside, a portion of the procurement generally must be set-aside when (1) a procurement exceeding \$10,000 is severable into two or more economic production runs, or reasonable lots, and (2) one or more small businesses are expected to be able to furnish such a severable portion at a reasonable price [Ref. 12].

## **6. Subcontracting**

When using competitive proposal procurements, the contracting officer is required to insert the clause in FAR Part 52.219-9, Small Business and Small Disadvantaged Business Subcontracting Plan, in solicitations and contracts that:

- offer subcontracting possibilities,
- are expected to exceed \$500,000, and
- are required to include the clause in FAR 52.219-8, Utilization of Small Business Concerns and Small Disadvantaged Business Concerns [Ref. 12]

Sealed bid procurements require that a small business plan be submitted upon request by the Contracting Officer [Ref. 12]. Basically, this requires the prime contract to award subcontracts to small businesses "to the fullest extent consistent with efficient contract performance." Also, under this clause the prime contractor retains the right to determine for themselves if a small business has the capability to perform a subcontract [Ref. 12].

## **C. SUMMARY**

The Federal Government does have contracting processes and programs in place to assist small business in obtaining Government contracts. The next chapter will explore what the reality is for small businesses seeking contracts for the environmental restoration of Fort Ord.



### **III. INTERVIEWS AND MEETINGS**

#### **A. INTRODUCTION**

This chapter presents all relevant information obtained through interviews and a public meeting, that pertain to the research topic. Specific interviewed sources include personnel from both the Federal Government and private sector. Information obtained from a public meeting on the environmental cleanup of Fort Ord is also presented in this section.

#### **B. GOVERNMENT INTERVIEWS**

##### **1. Congressional Representative**

Congressman Farr is the U.S. Congressional Representative for the 17th United States Congressional District, which includes Fort Ord, California, and has been active in assisting local businesses. Congressman Farr helped pass the National Defense Authorization Act of 1994. Part of this Act included the Pryor Amendment, which gives preferential treatment to local businesses. "Local" is defined as "the county a closed base is in and the adjacent counties." [Ref. 24] In addition to assisting in the passage of regulatory guidance, he also helped obtain additional funding for FORA. These funds were used to hire a contract specialist to track Government contracts, and to notify local businesses about any upcoming opportunities. This person also aids businesses with the bid process.

In addition, Congressman Farr has teamed with local Government and private organizations. His purpose in these teamings was to inform and educate the local community on



contracting and employment opportunities in the area. These actions were accomplished through several conferences that highlighted the environmental cleanup opportunities at Fort Ord.

## **2. United States (U.S.) Army Corps of Engineers, Sacramento, California**

The U.S. Army Corps of Engineers' office in Sacramento, California, is responsible for the environmental cleanup contract at Fort Ord. All environmental contracts are issued and administrated through that office. In addition to the Sacramento office, the U.S. Army Corps of Engineers also maintains a field office at Fort Ord. This office is responsible for the oversight of the work conducted on Fort Ord. Interviews conducted with the Corps of Engineers have revealed the following pertinent information.

### **a. Education of the Public on Contracting Process**

The U.S. Army Corps of Engineers has participated in a number of seminars, outreach programs and community meetings in order to inform the public about environmental cleanup at Fort Ord. They also use these opportunities to explain the Government's contracting process that small businesses must follow to participate in Government contracting at Fort Ord. This process begins with advertising through Presolicitation Notice, CBD, Plan Rooms, Public Notice, and Plan Holders List. The formal solicitation of all contracts is then announced through the CBD, SBA, or bidders lists. The primary solicitation instrument is the Request for Proposal (RFP), because the type of work that is required is not conducive to a sealed bid process. The bidders list is used for solicitations

below \$50,000, which is the small purchase threshold. The U.S. Army Corps of Engineers also has access to the Federal Acquisition Contracting Network (FACNET), and is expecting to raise the small purchase threshold to \$100,000 once the FACNET regulations are established [Ref. 19].

**b. Small Business Assistance**

Aside from educating small businesses on the Government contracting process, the U.S. Army Corps of Engineers has also established a small business specialist, to aid small businesses. This person maintains a list of all current contracts in the area. Any business can obtain this list and solicit work with these companies. [Ref. 19] In conjunction with the Small Business Specialist, the Administrative Contracting Officer (ACO) monitors the existing contract for compliance with small business goals.

**c. Status of TERC Contract**

The ACO [Ref. 23], stated that the current prime contractor for the TERC - International Technology Corporation - (IT) exceeded the small business subcontracting goal of the TERC. The contract specifies a small business subcontractor goal of 50 percent, and IT Corporation is currently at 69 percent. Although IT Corporation has met its overall small business goal, it is not meeting its subcontract goal for small disadvantaged businesses, which is 37 percent. Currently IT Corporation is at 22.5 percent. The need to perform the contract work quickly is the main reason for this failure. IT Corporation is expected to rectify this situation. IT Corporation reports monthly on its SB/SDB progress and problems to the U.S. Army Corps of Engineers through the SBA.

#### **d. General Issues**

Interviews conducted with the U.S. Army Corps of Engineers contracting personnel revealed several problematic issues relating to small businesses and environmental cleanup of Fort Ord. Personnel interviewed expressed many of the same issues concerning small businesses' lack of participation in the environmental cleanup at Fort Ord. These issues are:

- Small businesses do not know or understand the Government's procurement process [Ref. 20].
- Small businesses do not subscribe to the Commerce Business Daily. The high cost (\$650 per year) is prohibitive. [Ref. 20]
- Small Businesses lack enough experience in environmental cleanup. Experience is a major source selection criterion for contract award. [Ref. 19]
- Small businesses have high overhead costs, administration costs, and their failure to understand their economic situation.
- Small businesses find bonding and insurance costs are expensive and difficult to attain.

#### **3. Small Business Administration**

The Small Business Administration monitors the contractor's small business progress report. According to the Small Business Administration representative for Fort Ord, Mr. Paul Chann, the SBA has limited involvement with environmental cleanup at Fort Ord. The only assistance they provide includes assistance in meeting the bonding requirements of the contract.

#### 4. Fort Ord Reuse Authority (FORA)

Local reuse planning began in late 1992 with the formation of the Fort Ord Reuse Group (FORG). FORG was a cooperative planning committee with representatives for the cities of Marina, Seaside, Del Rey Oaks, Monterey, and Sand City. FORG is the predecessor to Fort Ord Reuse Authority (FORA).

In April 1994, the FORA was created with the passage of Senate Bill SB-899. FORA is a Federal, State, and local Government funded organization designed to plan and coordinate the reuse of Fort Ord. FORA has been in charge at Fort Ord since September 1994 and issued the Fort Ord Base Reuse Plan on October 14, 1994.

FORA was initially ineffective in coordinating the reuse of Fort Ord, due to infighting between the eight communities (Seaside, Monterey, Salinas, Marina, Pacific Grove, Del Rey Oaks, Carmel, and Sand City) represented by FORA. FORA has since corrected its problems and is now functioning as a team, although they continue to experience continuity problems. For example, the public information officer, who is the most senior employee, has only been with FORA since December 1994.

In addition to coordinating the reuse of Fort Ord, FORA has been active in aiding the local businesses. On August 21, 1995, FORA added a contract specialist to their staff. The purpose of this position is to monitor the solicitation of Government contracts and to aid local businesses in obtaining contracts with the Government and prime contractors at Fort Ord. In this case, the Government encompasses Federal, State, and local. FORA also established a class in bidding and contracting, but has not held the class yet, due to the lack of interest by small businesses.

In fact, the last class was canceled because of the lack of participation by small businesses.

During the interview with FORA officials several other issues of concern relating to small businesses and environmental cleanup of Fort Ord were also expressed: [Ref. 1]

- Lack of timely information.
- The fast solicitation and award of contracts.
- FORA feels that the Army should have done more to ensure that local businesses received larger portion of the Government's contracts.
- The lack of consolidated information on the parts of the Government and local businesses.
- The community has not banded together to fight for more of the environmental cleanup work at Fort Ord. Occasionally small groups have united, but over time they lose interest and are disbanded.
- FORA feels the Army could have issued more contracts in the \$200,000 range, thus enabling more small businesses to compete.
- The Army could have helped small businesses foster a partnership or co-op with larger businesses, thus enabling them to compete.
- Local politicians could have done more to assist local small businesses.
- Local businesses must be able to estimate their work properly. FORA contends that many businesses do not know what their expenses are for any one job. They tend to over bid for one and under bid for another, hoping it all works out at the end of the year. FORA plans to

offer classes to teach businesses the techniques necessary to plan effectively.

- Local Small businesses do not have the capital to bid for \$200 million contracts.
- Bonding and insurance can be a major problem for small businesses.

## **B. PRIVATE SECTOR INTERVIEWS**

### **1. International Technology (IT) Corporation**

An interview conducted with the IT Corporation revealed that this corporation is the prime contractor for the Total Environmental Restoration Contract (TERC). The TERC places a 40 percent goal for small business participation in subcontracting on the IT Corporation. IT Corporation actually bid a 50 percent goal. To meet this goal, IT Corporation has implemented an aggressive community outreach program. In April 1995, the IT Corporation submitted its Community Outreach Program Plan [Ref. 18] to the Corps of Engineers. This program applies to recruiting, the use of local hires, and subcontracting with local businesses. In particular, the plan targets qualified base personnel that have been displaced by the Base Realignment and Closure (BRAC) process, qualified individuals of the local communities, and qualified small businesses. To meet these objectives, IT Corporation has adopted a tiered hierarchy for staffing and subcontracting portions of the delivery orders to be completed under the TERC.

The hiring hierarchy of IT Corporation's Outreach Program includes the following four tiers: [Ref. 18, p2]

- The first tier constitutes the utilization of qualified members of the existing IT Staff.
- The second tier includes qualified base personnel that have been/or will be displaced from civil service/or military jobs due to BRAC and/or force downsizing.
- The third tier includes qualified members of the local community where the work is anticipated to be performed. This tier includes qualified community members at large, as well as qualified students or recent graduates of/from community and state colleges in the local area.
- The fourth tier includes qualified members of the general community.

To assist in its effort to meet the TERC subcontract goals for small businesses, IT corporation is developing a database and identifying qualified small businesses that are available locally. The data base will include a list of "prequalified" vendors and subcontractors, including small businesses, from which candidate businesses may be selected for bidders lists. The prequalified vendor and subcontractor list will be updated monthly. Additional businesses are added as they are identified. Sources of additional businesses include:

- Small businesses contacting IT directly,
- IT contacting specialized small businesses that are identified by the Small Business Administration, State of California Department of Transportation Division of Civil Rights, City and County of San Francisco Human Rights Commission, Northern California Minority Business Opportunity Committee, and large

incumbent Government contractors, seeking the identification of small businesses that have historically provided a cost effective, consistent, high level of service for their Government contract work.

Prequalification requires a business to meet the following criteria: [Ref. 18]

- Show a demonstrated capability to complete satisfactorily the types of work to be performed.
- Provide current insurance certificates in the amount specified in the IT Work Agreement, naming IT Corporation as additional insured.
- Provide IT Corporation with a current copy of the business' Injury and Illness Prevention Plan.
- Provide IT Corporation with a copy of the business' Quality Assurance (QA) Manual and Health and Safety Program Manual (if applicable).
- Show evidence of adequate financial resources, or the ability to obtain them, to assure timely subcontract performance.

Except for IT Corporation's teaming subcontractors' capabilities, all subcontractor services, equipment, materials, or supplies required for the performance of the TERC that result in a vendor total of \$2,500 or greater will be procured on a competitive basis unless expressly directed to do otherwise by the TERC Contracting Officer. For specialized products or services, where only one vendor or subcontractor is available, approval to award a sole-source contract is required from the TERC Contracting Officer for all contracts greater than \$25,000.



Since the award of the TERC in February 1995, IT Corporation has held job seminars in Monterey, San Francisco, Los Angeles, and San Diego. In May 1995, IT Corporation conducted a seminar in Monterey. This seminar attracted about 100 small businesses. As a result of this seminar about 60 of the companies that attended were prequalified with IT Corporation [Ref. 33]. One of the major concerns during this seminar was the affordability of insurance. IT Corporation offered, and still offers, that for any company that meets IT Corporation's qualification requirements (except for insurance), IT Corporation will work with them to obtain the required coverage [Ref. 33].

IT Corporation must adhere to the requirements of the Davis Bacon Act. This requires IT Corporation and all IT Corporation's subcontractors to pay the prevailing wages for the area. IT Corporation feels this is a big advantage for local businesses who do not have to pay extras, such as per diem, that non-local businesses must pay. IT Corporation has been successful in contracting with local businesses for services such as electrical, construction, moving dirt, and local labor. The problem arises when IT Corporation needs specialized work performed, such as drilling wells, and certain types of welding. For these types of services IT Corporation has had to go firms as far away as Canada. Most of IT Corporation's subcontractors are from the San Francisco Bay Area and the Tri County Area (Monterey County, Santa Cruz County, and San Benito County) [Ref. 33].

IT Corporation is pro small business and is trying to subcontract with as many small businesses as possible. To be a subcontractor for IT Corporation, small businesses must not only perform well, but also must be able accurately to estimate a job, and submit competitive proposals.

(Historically, small businesses have estimated contracts 20-50 percent greater than larger businesses of the same type.) The submission of a competitive proposal is important because IT Corporation awards contracts to the lowest bidder [Ref. 33].

## **2. Tri-County Builders Association**

An interview conducted with the Tri-County Builders Association representative, Sebastian Bordonaro (a small business owner and President of the Tri-County Builders Association), revealed that this organization is interested in all the contracts issued at Fort Ord, to include those from Federal, State, and local Governments. Mr. Bordonaro has been very active in attempting to get local small businesses involved in the environmental cleanup of Fort Ord. According to Mr. Bordonaro, no members of his Association, to include his own business, has benefited from the cleanup effort at Fort Ord. The Associations primary concerns include:

- Contract size.
- Not enough time to respond to an RFP.
- Source Selection. While local businesses have the expertise and experience outside companies are being brought in with greater expertise and more experience.
- Workers have lacked the required qualifications, but over the past six months training programs have been established to correct this problem.
- Businesses are now establishing the necessary qualifications and are teaming in order to be more competitive.

- Labor Unions and the University of California, Santa Cruz are training and teaching workers to perform the required duties.
- Davis Bacon is being bypassed by out of state companies.
- The laws giving preferential treatment to local businesses are vague.
- Corps of Engineers have been very helpful, but their hands are tied.

### **3. Shawnee Company, Incorporated**

An interview conducted with the Shawnee Company, Incorporated revealed that this is a small business owned and operated by Mr. Art Chen. Mr. Chen is a graduate of the University of California, Berkeley. He has been in the engineering and construction business since 1965. In 1990, Shawnee Company entered the environmental cleanup business. In 1994 Shawnee Company had revenues of \$2.5 million.

Mr. Chen has attempted to obtain numerous Government environmental cleanup contracts, to include contracts at Fort Ord. As of this date, he has not been successful and has encountered many obstacles. The following are examples of obstacles he has experienced:

- Government employees a major problem. They lack the desire to assist him and often show a lack of concern.
- The Small Business Advocate has been no help. On occasions Mr. Chen has been told that the goals for small business have been met. Thus little additional help was available.

- The Government's use of the regulations is too restrictive.
- The U.S. Army Corps of Engineers did not give his company a contract because the work was too complicated and dangerous for a small business.
- Bonding and insurance costs are prohibitive. In fact they are greater for a small business than a larger company.

#### 4. Dillard Environmental

An interview conducted with Dillard Environmental revealed that this is a small business headquartered in Byron, California, and is run by Mr. Dan Heath. The company's work is 25 percent State, 25 percent Federal, and 50 percent private. Mr. Heath states that it can be difficult to obtain Government contracts, but not impossible. The following are observations he has made while contracting with the Government:

- Small businesses must learn the system. Many companies do not spend the time and effort to learn the system and jump through the necessary hoops. There are certain steps that must be taken in order to win a contract. Once a company gets a contract it becomes easier to obtain others.
- Many companies say they can do anything. In reality they need to concentrate/specialize in a particular field and establish themselves as the best in that field.
- Companies must know their business. They must know how to accurately estimate costs, what is an acceptable profit level, and what is the competition.

- Many companies are not willing to complete the required paperwork to be considered for a contract award.
- Small businesses must be willing to work or team with other companies in order to obtain the required resources needed to be competitive.
- Bonding and insurance requirements can be expensive. Insurance can be as high as \$18,000 per month for the complete \$5 million insurance package.
- Small businesses must not be afraid to ask for assistance. Government agencies and employees can be very helpful. Also, companies who have experience contracting with the Government can be a tremendous source of information.

#### C. SUMMARY OF PUBLIC MEETINGS

The Director of Environmental Health, Walter Wong, held a public meeting, on 28 November 1994, at the Monterey County Court House, in Salinas, California. The subject of this meeting was environmental cleanup contracting at Fort Ord. Ruth Anne Ijames, Chief Contracting Division, United States Army Corps of Engineers, Sacramento, California, explained the Government's procurement policy. About 75 local small business owners and labor representatives were present. Small businesses expressed the following concerns [Ref. 34]:

- Geographical set-asides. Small businesses want the Government to set-aside 50 percent of all contracts for Monterey area small businesses.
- Small businesses want the Government to require prime contractors to use local subcontractors for 50 percent of their subcontractors.

- Small businesses do not know how to find out when the Government plans to solicit and award a contract. Most had not heard of the Commerce Business Daily.
- Small businesses wanted to know why the Monterey area has only received \$43,000 of the \$40 million already spent.
- Small businesses wanted all the environmental cleanup contracts to be broken down into a number of small contracts and awarded to local businesses.
- Small businesses wanted a local representative to sit in on all the source selection boards.
- Small businesses wanted the Government to notify local businesses when a solicitation was to be issued.
- Small businesses wanted the Government to consolidate the procurement process and only issue contracts through one agency.
- Small businesses feel they have the knowledge, expertise, and finances to perform, if the contracts were smaller.
- Small Businesses in the Monterey area feel the Government is not doing enough to ensure that they receive a fair proportion of all the environmental cleanup dollars [Ref. 34].

#### D. SUMMARY

This section presented pertinent information gathered through various interviews and public meetings. Many of the Government and private agencies and small businesses have reflected the same concerns and issues regarding environmental cleanup at Fort Ord, California. Chapter IV will identify and analyze these issues.



## **IV. ANALYSIS OF SMALL BUSINESS ENVIRONMENTAL CONTRACTING**

### **A. INTRODUCTION**

This chapter presents an analysis of small business environmental contracting associated with the environmental cleanup of Fort Ord, California. Barriers to entry into the Governmental contracting process are identified and discussed.

### **B. CONTRACTING PROCESS BARRIERS**

Throughout the Federal Government contracting process there are many inherent barriers to entry for small business. These barriers are identified and discussed below.

#### **1. Lack Of Knowledge Of The Procurement Process**

Small businesses in the Monterey area do not understand the Government's procurement process. This fact became quite evident during the interviews conducted and public meetings attended. One of the biggest complaints by small businesses is that they do not know when the Government is soliciting a contract. For example, the U.S. Army Corps of Engineers in Sacramento, California, and Huntsville, Alabama, are both soliciting for environmental cleanup at Fort Ord. Small businesses feel that each of these organizations are using different channels to solicit and award contracts. However, both agencies are actually using the same process. The problem is that small businesses do



not have knowledge of the procurement process. For example, small businesses are not aware of the following:

- The Federal Government must publish all solicitations above \$50,000 in the Commerce Business Daily, for a minimum of 15 days prior to issuance.
- The Government must publish the name of the successful offerors and the dollar amount of the contract award.

Small businesses seem to have the perception that the Government should notify them personally of all upcoming solicitations. However, if small businesses had knowledge of the procurement process, they would be aware of this notification vehicle and be able to compete for the award of a Government contract. Additionally, they would also have the opportunity to bid for subcontracts from contractors awarded Government contracts. Consequently, knowledge of the procurement process is vital for small businesses to compete successfully for Government contracts.

## **2. Lack Of Dissemination Of Information**

A problem associated with this issue is the lack of dissemination of information to small businesses. Until recently, although a handful of local labor unions and trade publications existed, no single organization represented the local businesses. Consequently, dissemination of information pertaining to the procurement process was difficult because the Government did not know who to contact. Now, even with the creation of a single organization, FORA, designed to assist the local

communities, dissemination of information still remains a continuing problem.

FORA is the Government's attempt to assist local communities affected by the closure of a military installation. Fort Ord was slated for closure in 1991 and officially closed in 1994. Title XXIX, National Defense Authorization Act of 1994, officially authorized a Local Reuse Authority (LRA), to represent communities affected by the closure of a military base. This Act resulted in the creation of the FORA, three years after the announcement of Fort Ord's pending closure. In particular, Part 91, Revitalizing Base Closure Communities - Base Closure Community Assistance states:

This part prescribes procedures to implement "Revitalizing Base Closure Communities" (Part 90), the President's five-part community reinvestment program, and real and personal property disposal to assist the economic recovery of communities impacted by base closures. The expeditious disposal of real and personal property will help communities get started with reuse early and is therefore critical to timely economic recovery.

The Monterey area communities wasted three years in getting started, but the formation of FORA in April 1994 was a step in the right direction. The idea of a reuse authority is good and in the long term FORA will probably be effective, but to date they have had many problems. The formation of FORA seemed to set off a land grab. Local communities were more worried about what land they would receive than exploring employment opportunities for local businesses.

Personnel continuity at FORA is a major problem. FORG the predecessor to FORA started the formation of a reuse

plan in 1992. In April 1994 FORA was formed with the passage of SB-899. In September of 1994 FORA officially assumed control of Fort Ord. The most senior official at FORA is the Public Affairs Officer, who has been with FORA since December 1994. Belatedly FORA took an interest in employment opportunities for the local communities and local businesses. In August 1995, they hired a contract specialist to tract, monitor, and identify contracting opportunities on Fort Ord. FORA still has a problem, because their contracting specialist does not know the Government's contracting process. In time he will become familiar with the process, but it may not be soon enough for local businesses. FORA is not only interested in Federal Government contracts at Fort Ord, but they are also interested in environmental cleanup contracts to be issued by State and local Governments and the University of California, Monterey Bay.

### **3. Lack of Desire to Learn the Process**

Small businesses also lack the desire to learn the procurement process, which is evident by their lack of participation in the pricing and contracting classes offered by the FORA. These classes were scheduled for the evening and were free to the public, yet interest was so poor that FORA canceled the first class. Consequently, it would appear that small businesses are not really interested in learning the process.

### **4. Lack of Persistence**

Once a small business learns about a contracting opportunity, it must have the patience and persistence to work through the Government procurement process. During an

IT Corporation community outreach seminar, this researcher heard several small business representatives complaining about the amount of paperwork needed to prequalify with IT Corporation. Much of this paperwork is necessary for prime contractors to satisfy Federal Government regulations on subcontractor participation in the procurement. It quickly became evident they did not want to complete the required forms. Consequently, they would not be eligible to receive contract offers from IT Corporation. On the other hand, Mr. Heath of Dillard Environmental, has taken the time and effort to learn and work through the process and says that now it is much easier for his company to obtain Government contracts.

#### **5. Solicitation Timeframe**

Within the contracting process, the solicitation timeframe is inadequate to meet the needs of small business. The U.S. Army Corps of Engineers, states that they advertise in the CBD 15 days prior to issuance of solicitations, and usually allow 30 days for bid submission. While this is the minimum time required, a longer time may be appropriate for contracts at Fort Ord. Small business owners say there is not enough time to prepare a bid, therefore advertising longer and giving a greater period of time to submit a bid would greatly aid them. On the other hand, an argument might be made that the need to cleanup Fort Ord as quickly as possible would prohibit the allowance of additional time.

Historical evidence suggests that the solicitation timeframe may not be a critical factor. In 1991, for example, the Base Realignment Commission decided to close and cleanup Fort Ord, but the TERC was not awarded until 1995. During this time there were a number of contracts for

environmental surveys and cleanup, but the TERC was the primary environmental cleanup instrument at Fort Ord. This would indicate that time may not have been that important. An extra 45 to 60 days would not have mattered to the Government, but could have made a big difference to small businesses. Nevertheless, additional time may only be beneficial if small businesses know about the solicitation.

#### **6. Costs Associated with Notification of Solicitations**

Although some small businesses may know the procurement process, costs associated with the notification of solicitations deter many from seeking the information. Small businesses cite the high cost of subscribing to the CBD (about \$650 per year), but fail to seek alternate methods for obtaining copies of the CBD. These methods may include: combining resources, sharing subscriptions to the CBD, using the CBD that is available through agencies such as FORA, and public meetings. Additionally, many of the "on-line" services such as CompuServe, America on Line, and the Internet provide access to the CBD at a reasonable price. This approach, however, requires investment in a personal computer to access the required information. Consequently, this investment may be prohibitive and therefore not a viable option.

#### **C. SMALL BUSINESS CONCERNS**

This section presents an analysis of primary problems impacting small businesses' entry into the Governmental contracting process associated with the environmental cleanup at Fort Ord. These concerns are identified and discussed below.

## 1. Competition with Larger Businesses

Competition with larger businesses causes a barrier to entry into the Government contracting process due to the inability of small businesses to compete on a grander scale. Small businesses have neither the resources nor the access to the resources to fulfill the requirements of a contract, in comparison to larger organizations. In an attempt to minimize these disadvantages, numerous laws and regulations have been created. Among these laws and regulations are the Pryor Amendment and the subparts of the DFARS.

Local businesses in the Monterey area state that they should receive preferential treatment due to the passage of the Pryor Amendment. Senator Farr, the 17th U.S. Congressional District Representative, helped pass the Defense Authorization Act of 1994 and in particular the Pryor Amendment to that Act. This amendment is often cited as a statute that gives preferential treatment to local small businesses. Mr. Bordonaro of the Tri-County Builders Association, feels that the amendment is vague and unenforceable. Mr. Bordonaro's assessment may be correct.

After examining the Pryor Amendment, this researcher was unable to determine whether local small businesses should receive preferential treatment for Government contracts in their geographical area. The Pryor Amendment deals mainly with Revitalizing Base Closure Communities and Community Assistance. Local communities are given preference for property that they can utilize for the creation of jobs in their communities. Thus, this amendment does not provide for preferential treatment in Governmental contracting at Fort Ord, only the acquisition of Government property which may be used by the local community for

business growth. Accordingly, although this law was passed to assist small businesses, in actuality it did not.

Small business also states that they should receive preferential treatment according to DFARS Subpart 226.7103. The DFARS addresses the issue of preferential treatment in the form of contract set-asides. Small businesses are aware of the Government's set-aside program, although they do not understand the regulations. The problem is the misinterpretation of DFARS Subpart 226.7103 [Ref. 7], which states:

In making set-aside decisions under Subpart 219.5 and FAR Subpart 19.5 for acquisitions in support of a base closure or realignment, the contracting officer shall-

- (a) Determine whether there is a reasonable expectation that offers will be received from responsible business concerns located in the vicinity of the military installation that is being closed or realigned.
- (b) If offers can not be expected from business concerns in the vicinity, proceed with section 8(a) or set-aside considerations as otherwise indicated in Part 219 and FAR Part 19.

Small business interprets this section to mean geographical set-asides for Monterey area small businesses. This is a concept they strongly support and expect. However, the Chief Contracting Officer for the U.S. Army Corps of Engineers, Sacramento, interprets this section differently. She interprets this to mean that all businesses can bid on the contracts, not just small businesses. So, which of these views is correct?

The answer requires a detailed examination of this section. The first part of this section states "to give preference, to the greatest extent practicable." Can small business practically bid on a \$100 million contract? The answer is no. One of small businesses' biggest complaints is that contracts are too large for them to compete. The President of the Tri-County Builders Association, Monterey, California, and many employees of small businesses interviewed, representing businesses that have and have not contracted with the Government, agree with this statement. Therefore it is not practicable to expect a small business to bid so the contracts must be open to all offerors. Thus, the DFARS section does not actually provide for preferential treatment in Governmental contracting at Fort Ord to small local businesses. Consequently, although this DFARS section intends to assist local small businesses, the size of the contracts at Fort Ord make it impracticable for small businesses to compete.

The second part of DFARS Subpart 226.7103 to examine is:

- (c) If offers can not be expected from business concerns in the vicinity -
  - (1) Set aside the acquisition for small disadvantaged business only if one of the expected offers is from a small disadvantaged business located in the vicinity.
  - (2) Set aside the acquisition for small business only if one of the expected offers is from a small business located in the vicinity.



Analysis of this statement reveals that environmental cleanup contracts at Fort Ord could not be set-aside for small or small disadvantaged businesses. The primary Federal contracts, the TERC and the unexploded ordinance removal contract, are \$180 million and \$100 million respectively. Earlier analysis has revealed that small business cannot practically bid for these large contracts. Therefore, the contract should not be set-aside for small or small disadvantaged businesses. If the Corps of Engineers could reduce contract size to about \$1 million, and there was a reasonable expectation of an offer, "from a small or small disadvantaged business located in the vicinity of the installation" then it could be set aside for small business but could still lose out to an offer from a small or small disadvantaged business outside the geographical area.

Additionally, if the requirements of the DFARS were flowed down to the prime contractor, then DFARS Subpart 226 would create set-aside contracts for local, small businesses. For example, the IT Corporation, who is the prime contractor for the TERC, is not required to adhere to the DFARS. If this requirement had been included in the TERC, it would have been a big boost for local and small businesses. IT Corporation is issuing contracts that are small enough for local small businesses to compete. Therefore, many of the contracts that IT Corporation awards could be set-aside for local small businesses because it would be reasonable to expect an offer from a local small business. But, under the existing situation at Fort Ord, environmental contracts are not set-aside for local, small businesses. Consequently, local, small businesses must compete against all businesses, large or small from anywhere

in the country, desiring to perform environmental cleanup on Fort Ord.

## **2. Contract Size**

Another barrier to entry of concern to small business regards contract size. Because of the limited resources belonging to small businesses, contracts in excess of \$10 million are not practicable for competition. However, the Government actually awards few small environmental contracts less than \$10 million. [Ref. 6] For example, the majority of the environmental cleanup at Fort Ord will be conducted with two contracts, the \$180 million TERC and a projected \$100 million contract for unexploded ordinance removal. Could these contracts be divided into a number of smaller contracts, thus allowing small businesses to compete? This would require an in-depth analysis of each contract, which is beyond the scope of this thesis. Although small businesses may not be able to compete with large businesses, they are, however, capable of performing as subcontractors for these large contracts. The TERC is one such example of opportunities for small businesses to perform as subcontractors.

Additionally, the Fort Ord TERC has a 50 percent small business goal, which is how the Government has realized that contract size is a problem. One of the objectives of the TERC is small business involvement. However, there are problems associated with the small business goal. The problems are two-fold. One is that the small business goal is a best efforts requirement. As long as IT Corporation shows they have attempted, in good faith, to meet the small business goal, the contractor cannot be defaulted. Additionally, had the IT Corporation been incentivized to

meet the small business goal, the Government would have had some financial leverage over the IT Corporation. An incentivization could be used as a punishment for failure to meet the small business goal, without defaulting the contractor. Meeting the small business goal is not an issue with IT Corporation on the Fort Ord TERC. IT Corporation has a very active outreach program that has been very successful in creating opportunities for small businesses. As of September 1995, IT Corporation has exceeded its small business goal and is reporting about 60 percent participation by small businesses.

The other problem facing small business is the lack of geographical contract set-asides. IT Corporation must abide by the Government contracting process. Therefore, they can and do set-aside a large percentage of their contracts for small businesses. However, all small businesses are eligible to bid, not just Monterey area small businesses. The percentage of local small businesses utilized by IT Corporation is not available because, although IT Corporation tracks small businesses for the purpose of reporting, they do not break small businesses participation by geographical location. While geographical set-asides may appear to be a good idea to many local small businesses, this is a strategy that could backfire in the long run. In the short term, local small businesses would see an increase in the amount of business they conduct, but as Government contracts expire and the environmental cleanup at Fort Ord ends, local businesses would not be able to expand into Government contracts outside the Monterey area. The very laws could give them preference at Fort Ord could then be used against them to keep them out of a new area that gives geographical preference to its local businesses.

### 3. Financial Resources

Limited financial resources are also a barrier to entry for small businesses. The Corps of Engineers officials feel that small businesses in the Monterey area do not have the assets or capital to compete for the current large environmental cleanup contracts. Small business, on the other hand, says money is not the problem, although they want the Government to reduce the size of the contracts that they award [Ref. 34]. Analysis reveals, however, that financial resources are a problem. Currently, small businesses cannot compete financially for the large Government contracts that are being awarded, or are in the process of being awarded. For small business to compete, contracts need to be below \$10 million.

However, small business could compete for larger contracts, if they take the time to read the Federal Acquisition Regulation (FAR), Part 32, Contract Financing. FAR Part 32.107 states:

If the contractor or offeror meets the standards prescribed for responsible prospective contractors at 9.104, the contracting officer shall not treat the contractor's need for contract financing as a handicap for a contract award; e.g., as a responsibility factor or evaluation criterion.

FAR Part 32.104 also states that "If the contractor is a small business concern, the contracting officer shall give special attention to meeting the contractor's contract financing need."

There are several Governmental contract financing tools available to address a financial need. These include:

- Partial payments.
- Progress payments based on percentage or stage of completion.
- Loan guarantees.
- Advance payments.
- Progress payments based on costs.

These financing tools would be particularly useful for labor intensive contracts. Contracts which require the use of specialized high dollar pieces of equipment could still be prohibitive. To pursue contracts requiring specialized equipment, small businesses must assess their market and determine if purchasing the needed equipment fits into the business' near and long term future. Thus, although financial resources are a barrier to entry, this can be mitigated by financing tools available to the contracting officer.

#### **4. Insurance and Bonding**

Insurance can be a major expense, creating a barrier to entry for small businesses. Obtaining insurance may be difficult and can cost \$18,000 per month. Although this insurance cost will eventually be paid by the Government, small businesses are initially required to pay the premiums. Major contractors, such as IT Corporation, are sometimes willing to work with their subcontractors to obtain the required insurance coverage, but small companies may have to start out performing small jobs in order to build a reputation with the insurance companies. Analysis reveals however, that insurance seems to be an unnecessary cost

placed upon the contractor. Since insurance is an allowable cost, the Government ultimately pays for the insurance coverage in a cost type contract. The Government has the ability to self insure, so why not do it in this situation and save the cost of the insurance? If there were a mishap, the Government would eventually pay. Although insurance can be expensive and difficult for small businesses to obtain, the Government could easily eliminate this barrier by waiving the requirement for insurance.

Another barrier to entry into Government contracting is the requirement for bonding, which varies from contract to contract. The TERC requires contractors to be bonded, which is very expensive and difficult to obtain. The SBA and local bonding companies are available to assist small businesses in obtaining the required bonding. Analysis reveals, however, that this is a cost that is chargeable to the contract, and therefore is reimbursed by the Government. For example, IT Corporation reimburses its subcontractors for the cost of bonding. In addition, the state of California has a bond guarantee program to help small businesses obtain the required bonding [Ref. 17]. Once again, the Government is picking up the tab, so why require bonding? Contractors are held liable under the terms of the contract; therefore, if they default there are legal actions that can be taken to recover excess costs due the Government. Thus, although bonding can be expensive and can be difficult for small businesses to obtain, the Government could easily eliminate this barrier by waiving the requirement.

## 5. Inadequate Cost Estimations

Inadequate cost estimations are another barrier to entry into Governmental contracting. One problem associated with cost estimations is overbidding. IT Corporation has stated that small businesses tend to bid 20 to 50 percent higher than other businesses. The major reasons cited by IT Corporation for the over estimation is that small businesses factor in too many contingencies. Analysis suggests that they are trying to eliminate all the risk to themselves and, in the process, are pricing themselves out of the competition. Accordingly, accurate cost estimation is important since IT Corporation, the largest contractor at Fort Ord, awards contracts to the lowest bidder.

Another reason for cost estimation errors is that some small businesses lack the knowledge to perform accurate cost estimation. Interviews conducted with FORA officials and small businesses revealed that many small businesses do not accurately estimate costs associated with contracted work. However, this problem could easily be rectified. There are a number of educational institutions, labor organizations, and Government organizations in the local area that are available to assist small businesses. There is also technology available in the form of computers and computer programs that could greatly increase a small business' ability to estimate costs and increase productivity. Thus, inaccurate cost estimations are a barrier to entry into contracting that could easily be rectified.

If properly performed, cost estimation can give local, small businesses an advantage over competing, outside businesses. For example, the TERC must adhere to the Davis Bacon Act, which requires that all companies must pay the local prevailing wage. This should help level the playing

field for wages. However, outside businesses may also pay their employees per diem and travel expenses to travel to Fort Ord. Small, local businesses do not. This further highlights the need for local businesses to estimate jobs properly in order to be more competitive than outside businesses.

#### **6. Lack Of Experience In Environmental Cleanup**

One of the main source selection criteria for an environmental cleanup contract award is experience [Ref. 19]. While small businesses in the local area have hazardous waste handling experience, they do not possess the degree of experience that their competition possesses [Ref. 19]. Local small businesses have limited experience with environmental engineering and surveying, which has been the primary environmental cleanup effort at Fort Ord prior to the issuance of the TERC [Ref. 20].

Although lack of experience is a barrier to entry into the Government contracting process, the amount of experience is a subjective measurement. For example, Mr. Chen of Shawnee Company, attempted to obtain a Government environmental cleanup contract. He was told that the environmental work was too complex and dangerous for a small business, and that his company was essentially not experienced enough. But, while experience is important, how much experience is required to be competitive? Thus, additional research into the experience requirement is needed to determine if local small businesses meet the requirements and what they must do to become competitive.



## **7. Lack Of Environmental Cleanup Training**

Many small businesses lack the training necessary to perform environmental cleanup. Federal and state laws require companies and their employees to possess certain qualifications in order to handle HTRW. Many small businesses feel this training is time consuming and expensive. They have even asked "If we do the required training will we be guaranteed work?" The answer is very simple - No. But, if the required training is not completed, small businesses are guaranteed they will not receive any environmental cleanup work at Fort Ord. For example, in 1991 it was decided that Fort Ord would undergo environmental restoration. Four years later, local small businesses still do not have the training required to be competitive. Consequently, local small businesses seriously hurt their own opportunities, because the organizations who are responsible for cleaning up Fort Ord are not going to wait for local small businesses to complete their training. Thus, small businesses must invest time and money to train their employees if they want to be competitive.

Research reveals that there are many training programs available to assist small businesses in receiving instruction in HTRW. Local educational institutions, such as Hartnell Junior College in Salinas and the University of California, Santa Cruz (UCSC), have courses designed to meet local businesses' needs. In January 1995, UCSC established an environment management program to train local workers and contractors. In August 1995, the first class of 17 people graduated from the program. In addition to the local educational institutions, the Laborers' International Union offers free on-site training, which is financed through Federal grants. Thus, there are many opportunities for

small businesses to receive training at little or no cost to themselves.

#### D. SUMMARY

This chapter presented an analyses of small business environmental contracting associated with the environmental cleanup of Fort Ord, California. The following barriers to entry into the Governmental contracting process were identified and discussed:

- Lack of Knowledge Of The Procurement Process.
- Lack of Dissemination Of Information.
- Lack of Desire to Learn the Process.
- Lack of Persistence.
- Solicitation Timeframe.
- Costs Associated with Notification of Solicitations.
- Competition with Larger Businesses.
- Contract Size.
- Financial Resources.
- Insurance and Bonding.

Conclusions drawn from this analysis and recommendations for future action will be presented in the following chapter.



## V. CONCLUSIONS AND RECOMMENDATIONS

### A. GENERAL

The closure of many U.S. military installations has drastically increased the amount of environmental restoration taking place nationwide and creating many opportunities for small businesses in environmental cleanup. Over the next 10 years, the Government intends to spend in excess of \$200 million for environmental restoration at Fort Ord. This offers small businesses, particularly those in the Monterey area, a prime opportunity to supply goods and services to the Government. The bulk of the environmental cleanup at Fort Ord will be accomplished through a TERC awarded to IT Corporation in May 1995. The TERC requires IT Corporation to utilize small businesses for 50 percent of their subcontracts. But, what are the principal barriers that small businesses in the Monterey, California area must overcome to participate in the environmental cleanup at Fort Ord, California?

The biggest barrier is small business itself. Small businesses in the Monterey, California area, have placed themselves at a great disadvantage. They see the Government spending millions of dollars on environmental cleanup and all they are doing is complaining and trying to change the law. Small businesses have not even banded together in an attempt to increase their competitiveness. It appears that local small businesses do not want to learn the Government's procurement process. Instead they want to sit back waiting for the Government to appear at their door step, contract in hand. Small business is expending a lot of effort and money lobbying their local congressional representatives to have

the laws changed to give them preferential treatment, when in fact they are the problem.

The local Governments have also been of little help. They wasted three years after the announcement of the closure of Fort Ord fighting over property. The Fort Ord Reuse Authority is finally orienting itself toward helping local businesses, with the hiring of a contract specialist. This action may be too little too late.

The U.S. Army Corps of Engineers is just beginning the environmental cleanup of Fort Ord. If small businesses do not learn the Government's procurement process quickly, they will see tens of millions of dollars go to businesses outside the Monterey area.

## **B. SPECIFIC CONCLUSIONS**

### **1. Contracting Process**

An analysis of the contracting process revealed the following:

#### **a. Knowledge Of The Procurement Process Is Vital For Small Businesses To Compete Successfully For Government Contracts**

Lack of knowledge of the procurement process to compete for Government contracts has prevented them from receiving a larger share of the environmental cleanup contracts at Fort Ord.

#### **b. Small Businesses Need A Single Point of Contact**

Previously, dissemination of information to small businesses has been difficult. Although the formation of FORA created a single organization designed to assist small businesses, dissemination of information regarding

environmental contracting opportunities at Fort Ord has continued to be limited.

**c. *Small Businesses Lack The Desire To Learn The Procurement Process***

Although assistance has been offered to educate small businesses on the procurement process they have not participated in these educational opportunities.

**d. *Small Businesses Lack The Persistence To Navigate Through The Government Procurement Process***

Small businesses are easily discouraged by the amount of paperwork and time required to complete the entire procurement process.

**e. *The Solicitation Timeframe Is Too Short To Meet The Needs Of Small Business***

Small businesses require more time to prepare a bid than larger businesses, due to a general lack of resources.

**f. *Costs Associated With Notification Of Solicitations Are Prohibitive***

Many small businesses cannot afford the costs of subscribing to the CBD or the equipment required to obtain information from other sources.

**2. *Small Business Concerns***

An analysis of small business concerns revealed the following:

**a. *If Local Small Businesses Desire To Participate At Fort Ord, They Must Compete Against All Businesses***

Under the existing situation at Fort Ord, environmental contracts are not set-aside for local, small

businesses. Consequently, local, small businesses must compete against any business desiring to perform environmental cleanup on Fort Ord.

***b. Contracts In Excess Of \$10 Million Are Not Practicable For Small Businesses***

Because of the limited resources, competing for contracts in excess of \$10 million is not practicable for small businesses.

***c. Small Businesses Lack The Capital To Compete For Large Environmental Cleanup Contracts***

Small businesses cannot compete financially for the large Government contracts that are being awarded, or are in the process of being awarded. For small businesses to compete, contracts need to be below \$10 million.

***d. Insurance And Bonding Requires A Large Initial Outlay Of Capital***

Obtaining insurance for environmental cleanup contracts for small businesses can be difficult, and can cost \$18,000 per month. Additionally, the TERC requires contractors to be bonded, which is also very expensive and difficult to obtain.

***e. Small Businesses Do Not Conduct Adequate Cost Estimations***

Small businesses tend to bid 20 to 50 percent higher than other businesses. Accurate cost estimation is important since many prime contractors award subcontracts to the lowest bidder.

***f. Local Small Businesses Have Limited Experience With Environmental Cleanup***

Local small businesses have limited experience with environmental cleanup activities, which hinders their

ability to compete for contracts at Fort Ord. While this may be true, measurement of the amount of experience is subjective.

***g. Small Businesses Lack The Training Necessary To Perform Environmental Cleanup***

Local small businesses do not have the required training to be competitive. Consequently, local small businesses seriously hurt their opportunities to compete for contracts because the organizations who are responsible for cleaning up Fort Ord are not going to wait for them to complete their training.

**C. RECOMMENDATIONS**

The United States Congress has established the Small Business Administration and enacted numerous laws to help small businesses compete for Government contracts. Additional laws may be more detrimental than helpful. If the Monterey area small businesses are truly interested in competing for Government contracts, they must take a more active role. The following recommendations will greatly increase their opportunities.

**1. Small Businesses Should Learn The Government's Procurement System And Be Aggressively Persistent Through the Process**

Knowledge of the procurement system, and persistence through the procurement process are vital for the success of any competing small business. Opportunities are available for small businesses to learn the Government's procurement process.



**2. Small Businesses Should Continue To Work With FORA But Also Become Involved With The Tri-County Builders Association Or An Industry Group/Organization More Aligned With Small Business' Interests**

Small businesses should continue to have a single organization representing their interests, and become actively involved with organizations that represent their interests. Organizations such as FORA are capable of performing the single point of contact function, and organizations such as the Tri-County Builders Association can provide an alignment of small business interests.

**3. Small Businesses Should Subscribe to the Commerce Business Daily**

Although it may be expensive to subscribe to the CBD, businesses should have access to this publication if they desire to participate in the Government procurement process. While this is not cheap, it will insure that the prospective contractor is informed about every Government contract solicitation and Government contract award. To help reduce costs several small businesses could team and purchase one subscription.

**4. Small Businesses Should Concentrate On Subcontracting And Teaming To Gain Experience**

After a Government contract has been awarded, contact the winning prime contractor and bid on sections of the contract. For contracts that have already awarded, a small business can contact the U.S. Army Corps of Engineers', small business specialist at (916) 557-5201, and obtain a list of all the current prime contractors in the area. In

addition, small businesses could team with other businesses who have experience in environmental cleanup.

**5. Register Small Business With The Local Small Business Administration**

Each small business must complete Standard Forms (SF) 254 and 255. This will enable the Small Business Administration to contact eligible businesses when a solicitation is released and set-aside for a small business.

**6. The Government Should Seek Additional Avenues of Disseminating Information**

An alternate method of disseminating information may include advertising. Advertising would cause little additional work on the part of the Government contracting officer. Also this approach would aid small businesses, which tend to rely on their local newspapers, union halls, and trade publications to discover new opportunities.

In addition to advertising, public meetings are another source of information. The U.S. Army Corps of Engineers has helped sponsor several public meetings in conjunction with local Governments, labor organizations, educational institutions, and International Technology Corporation in an attempt to educate small businesses and the public.

**7. Small Businesses Should Improve Their Cost Estimating Techniques**

Small businesses must spend more time learning their business. In particular, they must learn to estimate future jobs better.

#### D. ANSWER TO RESEARCH QUESTIONS

##### 1. Primary

The primary research question for this thesis is:

*What are the principal barriers that small businesses in the Monterey, California area must overcome to participate in the environmental cleanup at Fort Ord, California?*

The principal barriers to small businesses are the following:

- Lack of Knowledge Of The Procurement Process.
- Lack of Dissemination Of Information.
- Lack of Desire to Learn the Process.
- Lack of Persistence.
- Solicitation Timeframe.
- Costs Associated with Notification of Solicitations.
- Competition with Larger Businesses.
- Contract Size.
- Financial Resources.
- Insurance and Bonding.

## **2.   Subsidiary**

The supporting research questions and their answers for this thesis are as follows:

**a.   Why Have Monterey Area Small Business Contractors Not Been Successful In Competing For Federal Government Environmental Cleanup Contracts At Fort Ord, California?**

Local small businesses do not understand the Government's contracting process. This has hurt their ability to bid for contracts or compete as subcontractors. They have not invested in the required training. Their job estimation ability is questionable. Additionally, they have not sought opportunities that would enable them to establish the experience they need to be competitive.

**b.   Are There Barriers, Either Real Or Perceived, To Monterey Area Small Businesses Desiring To Compete For The Government Environmental Cleanup Contracts?**

There are no real barriers. IT Corporation is issuing 60 percent of their subcontracts to small businesses. Local small businesses are in a perfect position to benefit.

**c.   How Have Small Businesses Currently Under Government Contracts Entered The Market At Fort Ord?**

Subcontracting with IT Corporation is the primary means for small businesses participation at Fort Ord. Much of the work to date has been in construction and electrical work.

**d. What Resources Are Available To Assist Small Businesses In The Monterey Area In Competing For Environmental Cleanup Contracts At Fort Ord?**

There are numerous organizations in the Monterey area available to assist small businesses. These organizations include the Small Business Administration, the United States Army Corps of Engineers, the Fort Ord Reuse Authority, International Technology Corporation, Tri-County Builders Association, local labor unions, and the local educational institutions.

**E. AREAS FOR ADDITIONAL RESEARCH**

The following areas are recommended for additional research:

- How is a TERC administrated?
- Examine the TERC to determine: Could the TERC have been broken down into smaller contracts? Could local small business have performed those contracts?

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